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7 ANGEL AGUILERA,
8 Plaintiff,
9 v.
10 T. MOLINA, et al.,
11 Defendants.

Case No. 18-cv-03389-HSG

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**ORDER LIFTING STAY; REOPENING
CASE; SETTING BRIEFING
SCHEDULE**

Plaintiff, an inmate housed at Pelican Bay State Prison (“PBSP”), filed this *pro se* action pursuant to 42 U.S.C. § 1983, alleging that PBSP officers Molina and Hendrix used excessive force on him, in violation of the Eighth Amendment. Dkt. Nos., 38, 43, 54. On March 1, 2021, the Court stayed this case pending resolution of state court criminal proceedings against Plaintiff, specifically *People v. Aguilera*, Del Norte Cty. Sup. Ct. Case No. DNSU-CRPB-2020-5019-1 (“Aguilera I”). Dkt. No. 67. On March 10, 2022, Plaintiff was sentenced in *Aguilera I*. Dkt. No. 71. Plaintiff has informed the Court that he wishes to continue with this action, Dkt. No. 72, and Defendants have informed the Court that they intend to seek dismissal of this action pursuant to *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), as well as any other grounds appropriate for summary judgment, Dkt. No. 71.

In light of the foregoing, the Court orders as follows.

1. The Clerk of the Court is directed to LIFT the administrative stay and REOPEN this action.

2. Whether this action is barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), is a threshold issue that should be determined before proceeding to the merits of this action. Accordingly, within sixty (60) days of this order, Defendants shall file a motion for dismissal of

1 this action pursuant to *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Plaintiff's opposition shall
2 be filed and served no later than twenty-eight (28) days after the date Defendants' motion is filed.
3 Defendants shall file a reply brief no later than fourteen (14) days after Plaintiff's opposition is
4 filed. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will
5 be held on this motion. If the Court finds that this action is not barred by *Heck*, the Court will set
6 a briefing schedule for dispositive motions addressing the merits of this case.

7 **IT IS SO ORDERED.**

8 Dated: 3/20/2022

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10 HAYWOOD S. GILLIAM, JR.
United States District Judge

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United States District Court
Northern District of California